

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of	)	
	)	
Amendment of Section 73.202(b)	)	
FM Table of Allotments,	)	MB Docket No. 02-255
FM Broadcast Stations.	)	RM-10524
(Depoe Bay, Garibaldi, Cottage Grove,	)	
Veneta and Toledo, Oregon)	)	

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: August 14, 2002**

**Released: August 30, 2002**

**Comment Date: October 21, 2002**

**Reply Comment Date: November 5, 2002**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rulemaking filed by Alexandra Communications, Inc. licensee of Station KDEP(FM), Depoe Bay, Oregon, Signal Communications, Inc., licensee of Station KEUG, Inc., Cottage Grove, Oregon, and Agpal Broadcasting, Inc., licensee of Station KPPT(FM), Toledo, Oregon ("petitioners"), requesting that we substitute Channel 288A for Channel 288C3 at Depoe Bay, Oregon, reallocate Channel 288A from Depoe Bay to Garibaldi, Oregon, and modify the license of Station KDEP(FM) to specify the new community. The petition also requests that we substitute Channel 283C3 for Channel 288A at Cottage Grove, Oregon, reallocate Channel 288C3 to Veneta, Oregon, and modify the license of Station KEUG(FM) to specify the new community. Finally, the petition requests that we reallocate Channel 264C2 from Toledo, Oregon to Depoe Bay, and modify the license of Station KPPT(FM) to specify the new community.

2. This proposal was filed pursuant to Section 1.420(i) of the Commission's Rules that authorizes the Commission to modify the license or permit of an FM station to specify a new community of license where the amended allotment would be mutually exclusive with the station's present allotment.<sup>1</sup> In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.<sup>2</sup>

3. In support of its proposal, petitioners state that these changes would result in a preferential arrangement of allotments because they would result in the provision of a first local aural transmission service at two of the proposed communities, Garibaldi and Veneta, Oregon, which qualify as communities for

<sup>1</sup> See, *Modification of FM and TV Authorizations to Specify a New Community of License (Report and Order in MM Docket No. 88-526)*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

<sup>2</sup> The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], See *Revision of FM Assignment Policies and Procedures (Second Report and Order in BC Docket 80-130)*, 90 FCC2d 88, 91 (1988).

allotment purposes, and the reallocation of Channel 264C2 from Toledo to Depoe Bay will retain a first local aural transmission service at Depoe Bay. In addition, Cottage Grove and Toledo will retain local aural transmission service from Stations KCGR(FM) and KPPT(AM), respectively. Veneta, Oregon is an incorporated city with a 2000 Census population of 2,755 persons, and Garibaldi is an incorporated city with a 2000 Census population of 899 persons. None of the communities is in an Urbanized Area, and although the 70dBu contour of Channel 288C3 at Veneta will cover 29% of the Eugene-Springfield Urbanized Area, this is not a sufficient amount to trigger consideration of the proposal pursuant to the principles outlined in *Faye and Richard Tuck*.<sup>3</sup> In addition, no white or gray service areas would be created, and the proposal will create a net gain of 172,071 persons, 7,625 of whom will gain a fourth service and 2,763 of whom will gain a fifth service.

4. We believe that the proposal warrants consideration because it would provide Garibaldi and Veneta with their first local aural transmission services without removing the sole local transmission service from Depoe Bay, Cottage Grove or Toledo, which will serve priority (3) of the FM Allotment priorities. In addition, it will allow three stations to upgrade their facilities and serve an additional number of persons. An engineering analysis has determined that Channel 288A can be allotted at Garibaldi at a site 11 kilometers (6.8 miles) south of the community.<sup>4</sup> Channel 288C3 can be allotted at Veneta at a site 4.8 kilometers (3.0 miles) southwest of the community.<sup>5</sup> Channel 264C2 can be allotted at Depoe Bay at Station KPPT(FM)'s current site 5.9 kilometers (3.7 miles) south of the community.<sup>6</sup>

5. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>Channel</u>		
<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Depoe Bay, Oregon	288C3	264C2
Garibaldi, Oregon	--	288A
Cottage Grove, Oregon	263A, 288A	263A
Veneta, Oregon	--	288C3
Toledo, Oregon	264C2	--

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

7. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **October 21, 2002**, and reply comments on or before **November 5, 2002**, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners' counsel, as follows:

<sup>3</sup> *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

<sup>4</sup> Coordinates for Channel 288A at Garibaldi are NL 45-27-50 and WL 123-56-37.

<sup>5</sup> Coordinates for Channel 288C3 at Veneta are NL 44-01-56 and WL 123-24-19.

<sup>6</sup> Coordinates for Channel 264C2 at Depoe Bay are NL 44-45-23 and WL 124-03-01.

Robert Lewis Thompson  
Thiemann, Aitken & Vohra, LLC  
908 King Street, Suite 300  
Alexandria, VA 22314

8. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.<sup>7</sup>

10. For further information concerning this proceeding, contact Victoria M. McCauley (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioners constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau

Attachment: Appendix

---

<sup>7</sup> See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*. 46 FR 11549 (February 9, 1981).

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.